IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. OF 3004 1991.

1. Shantikumar Nanasaheb Hiwale, deceased through the Legal heirs

(1a) Shri Praffulkumar Nanasaheb Hiwale since deceased through the legal heirs
(1aa) Smt. Rajani Praffulkumar Hiwale, R/o 941, Shukarwar Peth, Pune - 411 002.
(1ab) Shri Sanjeev Praffulkumar Hiwale, R/o 941, Shukarwar Peth, Pune - 411 002.

(1b) Shri Subhash Rajaram Hawal, since deceased through his heirs:
1b(i) Smt. Shashikala Subhash Hawal, age 54 years, Occ: Household ,
1b(ii) Master Viashal Subhash Hawal, age 17 years, Occ: Student,
1b (iii) Master Girish Subhash Hawal, age 16 years, Occ: Student,
All R/at 941, Shukrawar Peth, Pune - 411 002.

2. Shri Chandrkumar Nanasaheb Hiwale, Deceased through his legal heirs
(a) Smt. Maltibai Chandrakumar Hiwale, Age: Adult, Occupation : Tailoring, Residing at 941, Shukrawar Peth, Pune - 411 002.
(b) Smt. Mina Ulhas Gaikwad, Age: Adult, Occupation: Household, Residing at As above.

.. Petitioners (Ori. Defdts.)

Versus

Master Umeshlal Bhawarlal Oza, Minor through his mother guardian adlitens Applicant Sou. Ranjanabai Bhawarlal Oza, Age: Adult, Occupation: Household, Residing at 601, Shukrawar Peth, Pune - 411 002.

.. Respondent (Ori. Pltff.)

Mrs. Lalita Panchakshari with Mrs. Rupali Deo for the petitioners.

Mr. Jagdish Reddy i/b Mrs. Suhasini Mutalik for the respondent.

CORAM: ANOOP V. MOHTA, J.

DATED: 26TH JULY, 2005

ORAL JUDGMENT. :

1. The petitioners are in occupation of the premises i.e. one room on the ground floor in Shukrawar Peth, Pune. The tenancy was monthly @ Rs.2.25 plus education cess. The respondent-landlord, as in need of the premises, after due notice of termination, filed the Suit No. 1599 of 1983 for eviction in the Small Causes Court, Pune (for short "Trial Court") on the grounds of acquisition of suitable accommodation, change of user, sub-letting, bonafide requirement, comparative hardship and default. The same was resisted by Written Statement by the petitioners. The evidence was led by the parties. The learned Trial Court, after considering the material on the record, decreed the suit on the ground of securing alternative accommodation, reasonable and bonafide requirement and comparative hardship. However, the Trial Court rejected the case on the ground of

sub-letting and change of user. The Additional District Judge, Pune (for short "Appellate Court") in the Appeal filed by the petitioner-tenant, dismissed the Appeal. Therefore, the present Writ Petition by the petitioners.

2. Heard the learned counsel Mrs. Lalita Panchakshari for the petitioners and Mr. Jagdish Reddy for the respondent. It is necessary to make a reference to the Additional Affidavit dated 27th June, 2005, filed on the record. It was replied to by Affidavit dated 18th July, 2005. The averments made in those Affidavits refer to the subsequent events and developments which are necessary to adjudicate the issue involved in the present Writ Petition. After considering the rival contentions raised by the parties, the undisputed position which emerges in the present case is that the landlord is occupant of rented premises. His position, if taken note of, the ownership of two sheds, five shops, an open plot of land, in no way disentitles him to claim possession of the premises and/or supports the case of the petitioners-tenant. The need of the residential premises of the landlord cannot be equated with the possession of non-residential premises or open plot owned by such landlord. If all those properties are not suitable for residential purpose and as prayed and claimed, a case of bonafide need is made out, I am

inclined to grant the relief as prayed by the landlord.

3. The Additional Affidavit and its reply, therefore, in no way, supports the case of the petitioners. On the contrary, the Affidavit further supports the contention of the landlord to the effect that the petitioners-tenant is working with Sassoon General Hospital and had two sons aged 23 and 25 years who are working in private company. She, being permanent employee of Sassoon Hospital, she can easily get a residential quarter. These averments also remained uncontroverted. The landlord-respondent is admittedly residing with his family members consisting of 7 members in a small room measuring 7’ X 9’ and which is, as averred, insufficient accommodation. In this background also, the suit for possession need to be maintained.

4. Insofar as acquisition of an alternative accommodation by the tenant-petitioners is concerned, there is a concurrent finding that the petitioners are in occupation of four rooms besides the room in question. This concurrent finding, if taken note of, there is no other case made out or any perversity pointed out even on this ground.

5. For the above reasons, the view taken by the Courts below, in no way, can be said to be unjust or unreasonable. It is within the framework of law and the record. In the above circumstances, the Writ Petition is dismissed. Rule is discharged. No order as to costs.

6. At the request of the learned counsel appearing for the petitioners, six months time is granted to vacate, subject to filing of usual undertaking by all the petitioners and adult members residing in the suit premises within a period of 15 days, failing which, the landlord shall be at liberty to execute the decree for possession.

[ANOOP V. MOHTA, J.]

[srpasha@hc]